

OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE #02-2020

TO: Chief Local Elected Officials
Workforce Development Board Chairs
Workforce Development Board Staff
Fiscal Agents

FROM: Don Morris, Executive Director

DATE: May 20, 2020

SUBJECT: Sanctions and Resolution Process

PURPOSE: The Oklahoma Office of Workforce Development (OOWD) as the Governor's chosen entity to administer the Workforce Innovation and Opportunity Act (WIOA) funds provides this issuance to communicate and implement the sanctions and resolution processes for sub recipients of federal and state grants administered by OOWD.

REFERENCES:

- Workforce Innovation and Opportunity Act (WIOA) Sec. 106
- WIOA Sec. 107
- WIOA Sec. 184
- 2 CFR 200.113
- 2 CFR 200.207
- 2 CFR 200.338
- 2 CFR 200.519
- 2 CFR 200.328-200.331
- 2 CFR 463.220
- 20 CFR 677.210
- 20 CFR 679.350
- 20 CFR 683.400-683.440
- 20 CFR 683.620-683.650
- 20 CFR 683.700-683.750
- Oklahoma Office of Workforce Development Issuance (OWDI) #08-2019
- Oklahoma Office of Workforce Development Issuance (OWDI) #02-2017
- Oklahoma Office of Workforce Development Issuance (OWDI) #11-2017, Change 1
- Oklahoma Office of Workforce Development Issuance (OWDI) #05-2017, Change 2
- Oklahoma Administrative Code 150:120-7-3

MESSAGE: Under the WIOA regulations, the U.S. Secretary of Labor holds the recipient (Governor) responsible for all funds granted to the State. In turn, the Governor holds all recipients and subrecipients, including local boards and program providers, responsible for all WIOA funds received, including the proper expenditures of such money. The Governor is responsible for monitoring compliance with WIOA requirements as well as other applicable federal and state laws and policies.

RESCISSIONS
None

EXPIRATION DATE
Continuing



The Chief Local Elected Official (CLEO) in a local workforce area is liable for any misuse of any WIOA Title I funds (unless an agreement has been reached with the Governor to bear such responsibility). When the local workforce area is composed of more than one unit of general local government, the chief elected officials of such units may execute an agreement that specifies the respective roles of the individual CLEOs.

Monitoring Process

Oklahoma Office of Workforce Development Issuance (OWDI) #11-2017 details the Governor's standards for oversight and monitoring. The primary purpose of the Governor's directed oversight and monitoring activities is to ensure that local area boards and fiscal agents operate programs and provide integrated service delivery efficiently and effectively in compliance with all applicable laws, regulations, uniform administrative requirements, and State and locally-established policies. OOWD, as the Governor-assigned administrative entity for the Workforce Innovation and Opportunity Act, has the responsibility for oversight and monitoring of programs, and the Oklahoma Works (One-Stop) Delivery Systems. Oversight and monitoring will focus on local areas systems to ensure acceptable standards for fiscal accountability, program administration, procurement, and integrated services delivery are established and in practice. Oversight and monitoring will be conducted year-round or as described in monitoring policy OWDI 11-17 Change 1 to ensure compliance with applicable uniform administrative requirements; to identify system strengths, weaknesses, required corrective actions, and trends requiring State action; and to gather and share best practices throughout the State's workforce community.

In addition to routine annual monitoring, the OOWD may investigate any matter(s) deemed necessary to determine compliance with all applicable laws, regulations, uniform administrative requirements, and State and locally-established policies. These investigations may be performed at any time.

Sanctionable Acts

The Oklahoma Office of Workforce Development may assign conditions, remedial actions and/or penalties to a subrecipient for failure to comply as required with state and federal regulations. The severity of these restrictions is proportional to the frequency, nature and severity of the sanctionable act(s). Sanctionable acts include but are not limited to the following:

- a. Failure to submit timely and accurate required financial or performance reports.
- b. Failure to take corrective actions to resolve findings identified during monitoring, investigative, or program reviews, including failure to comply with a technical assistance plan developed by OOWD.
- c. Failure to rectify or resolve all independent audit findings or questioned costs within required time frames.
- d. Failure to submit required annual audits.
- e. Breach of administrative and service contract requirements.
- f. Failure to retain required service delivery and financial records.
- g. Failure to meet the state performance accountability indicators or the adjusted levels of performance agreed to under §677.210 for the primary indicators of performance in the adult, dislocated worker, and youth program(s) in any program year.
- h. Failure to meet the state performance accountability indicators or the adjusted levels of performance agreed to under §677.210 for the primary indicators of performance in the adult, dislocated worker, and youth program(s) for a third consecutive program year.
- i. Gross negligence or substantial violation.
- j. Incidents of fraud, abuse, malfeasance, misapplication of funds, or lack of sustained fiscal integrity.
- k. Failure to carry out the functions of a local board as required in WIOA 107 (d).

Sanction Process and Parameters

In determining whether to impose any sanction(s) against a recipient or subrecipient of WIOA Title funds, the U.S. Secretary of Labor first determines whether there has been adequate state and/or subrecipient action demonstrated to:

- Establish and adhere to an appropriate system, for entering into and monitoring subgrant agreements and contracts with subgrantees and contractors, that contains acceptable standards for ensuring accountability;
- Entered into a written subgrant agreement or contract with such a subgrantee or contractor that established clear goals and obligation in unambiguous terms;
- Acted with due diligence to monitor the implementation of the subgrant agreement or contract, including carrying out the appropriate monitoring activities (including audits) at reasonable intervals; and
- Taken prompt and appropriate corrective action upon becoming aware of any evidence of a violation of this title, including regulations issued under this title, by such subgrantee or contractor.

NOTE: The Executive Director of the OOWD, or his or her designee, is responsible for resolving all findings. When a subrecipient is found in noncompliance, the Executive Director or designee will issue sanctions and notify the subrecipient of processes for appeal. (Oklahoma Administrative Code 150:120-7-3)

Remedial Actions and Penalties

If the OOWD Executive Director determines that a local area is not in compliance with the appropriate uniform administrative requirements or is not responsive to monitoring findings, sanctions may be imposed up to and including identifying the local area as “high risk” pursuant to 2 CFR 200.519. If this determination is made, OOWD may impose special conditions or restrictions in an attempt to correct these non-compliance issues. In accordance with WIOA Sec. 184. These conditions, remedial actions and penalties may include but are not limited to one or more of the following:

- a. Require corrective action to secure prompt compliance with the requirements.
- b. Cease the disallowed activity.
- c. Reclassify the cost to allowable categories, if feasible.
- d. Pay back drawn funds to the State immediately upon determination that the costs are disallowed and reclassification is not an option.
- e. Delay, suspension or denial of contract payments or withholding the release of grant funds.
- f. Appearances at Governor’s Council of Economic Development meetings by the subrecipient to report on progress until full compliance is secured or making such other changes as the Secretary or Governor determines to be necessary to secure compliance with the provision.
- g. Impose special conditions or restrictions.
- h. Issue a notice of intent to revoke approval of all or part of the local plan affected.
- i. Impose a reorganization plan, which may include decertifying the local board involved, and/or merging the local area into one or more other local areas.
- j. Prohibiting the use of eligible providers.
- k. Mitigating risk by restricting fiscal agency activities.
- l. Selecting an alternative entity to administer the program for the local area involved.

Which specific conditions, actions and/or penalties will be imposed is based on the totality of circumstances surrounding the sanctionable acts, such as the severity of the finding, patterns of behavior or incidents, degree of cooperation demonstrated by the local area and other factors.

State Board or Designee Policy

The state considers its subrecipients accountable for actions taken, directly or indirectly, through service providers. As such, the state will look to its subrecipients for corrective action, even where the violation or deficiency involved a single service provider. Specifically, the state will:

- Undertake periodic review and monitoring of its subrecipients' activities, including administrative, financial, and programmatic assessments, as well as compliance with the WIOA statute, regulations, DOL and/or state policies/procedures as described in OWDI #11-2017, Change 1, Governor's Oversight and Monitoring Policy. This includes processes for corrective actions and appeals.
- Continue to monitor implementation of corrective actions for improvements in deficient areas. Where corrective action is ongoing (e.g. debt collection for inappropriate expenditure of funds), no further action or sanction would be imposed unless corrective action was not completed or had failed.

Sanctions not related to Performance Standards

OWDI #11-2017, Change 1, provides subrecipients with the procedure for appealing state-imposed sanctions.

Sanctions for Local Non-Performance

The state must establish the threshold for failure to meet adjusted levels of performance and state performance accountability indicators for a local area before coming to agreement on the negotiated levels of performance for the local area. Following the conclusion of the program year, the state must establish the adjusted level of performance for a local area, using the statistical adjustment model described. At least two years of complete data on any indicator for any local core program are required in order to establish adjusted levels of performance for a local area. OOWD will provide technical assistance if a local area fails to meet the state performance accountability indicators or adjusted levels of performance agreed to for the primary indicators of performance in WIOA Title I programs in any program year. Assistance will be conducted virtually via telephone, electronic means, or on-site both regionally and locally, and may include:

- Assistance in the development of a performance improvement plan
- The development of a modified local or regional plan
- Other actions designed to assist the local area in improving performance; or
- On-site training of local board staff and service provider staff.

If a local area fails to meet the state performance accountability indicators or adjusted levels of performance agreed to under the regulations at 20 CFR §677.210 for the same primary indicator of performance for the same core program authorized under WIOA Title I for a third consecutive program year, OOWD Executive Director will review the performance deficiencies and establish corrective actions and sanctions under the authority of the Governor's Council for Workforce and Economic Development to carry out the administration and oversight of the WIOA Act:

- require the appointment and certification of a new local board, consistent with the criteria 20 CFR § 679.350, which may include a reorganization plan pursuant to WIOA 107(c)(3)(C);
- prohibit the use of eligible providers, including but not limited to, service providers, eligible training providers, One-Stop Operators and others that have been identified as achieving poor levels of performance; or
- take such other significant actions as the Governor's Council for Workforce and Economic Development determines are appropriate.

OOWD Executive Director will also issue a notice of intent to revoke approval of all or part of the affected local plan, requiring at a minimum, modification of the local area's local plan, and may make other significant actions as the Governor's Council for Workforce and Economic Development determines are appropriate. This schedule of performance failures relative to remedial actions and/or penalties is further outlined in the following table.

Administrative Violations

Violation	Possible Sanction(s)
Failure to address deficiencies within thirty (30) days after receipt of the state's monitoring report outlining corrective action required	Imposition of a Reorganizational Plan, including, but not exclusively limited to: <ol style="list-style-type: none"> Decertifying the LWDB involved; Prohibiting the use of specific providers (performance standard sanctions would include eligible providers and One-Stop partners who have been identified as achieving low level of performance, and other actions as determined appropriate); Selecting an alternative entity to administer the program for the local area involved; Merging the local area into the other local area; and Making other such changes as determined necessary to ensure compliance.
Failure to submit accurate required financial, participant, data collection, and other reports by established due dates without written explanation and local workforce area written acknowledgment	<ol style="list-style-type: none"> OOWD taking over data entry for both financial and participant data and charging grantee for cost of inputting; and/or Disapproval of requests for specific or all WIOA fund drawdowns until the violation or deficiency has been corrected. The OOWD will temporarily assign WIOA administrative and program responsibilities, as appropriate, to alternative program operators. These program operators will be directly responsible to the state.
Failure to monitor subrecipients	<ol style="list-style-type: none"> OOWD taking over data entry for both financial and participant data and charging grantee for cost of inputting; and/or Disapproval of requests for specific or all WIOA fund drawdowns until the violation or deficiency has been corrected. The OOWD will temporarily assign WIOA administrative and program responsibilities, as appropriate, to alternative program operators. These program operators will be directly responsible to the state.

Fiscal Violations

Violation	Possible Sanction(s)
Failure to conduct procurement according to state and federal policies and procedures, including prior approval where necessary	Disallowing costs associated with a particular violation or deficiency and the seeking of repayment.
Charging unallowable costs to a grant.	<ol style="list-style-type: none"> Disallowing costs associated with a particular violation or deficiency and the seeking of repayment; Revocation of a local area plan until conditions, violations, or deficiencies have been corrected (i.e., subrecipients without approved Plans cannot receive any WIOA funds). The OOWD or its designee will temporarily assign WIOA administrative and program service responsibilities, as appropriate, to alternative program operators. These program operators will be directly responsible to the state; and/or

Violation	Possible Sanction(s)
	<ol style="list-style-type: none"> 3. Imposition of a Reorganizational Plan, including, but not exclusively limited to: <ol style="list-style-type: none"> a. Decertifying the LWDB involved; b. Prohibiting the use of specific providers (performance standard sanctions would include eligible providers and One-Stop partners who have been identified as achieving low level of performance, and other actions as determined appropriate); c. Selecting an alternative entity to administer the program for the local area involved; d. Merging the local area into the other local area; and e. Making other such changes as determined necessary to ensure compliance.
Charging the same costs to more than one grant.	<ol style="list-style-type: none"> 4. Disallowing costs associated with a particular violation or deficiency and the seeking of repayment; 5. Revocation of a local area plan until conditions, violations, or deficiencies have been corrected (i.e., subrecipients without approved Plans cannot receive any WIOA funds). The OOWD or its designee will temporarily assign WIOA administrative and program service responsibilities, as appropriate, to alternative program operators. These program operators will be directly responsible to the state; and/or 6. Imposition of a Reorganizational Plan, including, but not exclusively limited to: <ol style="list-style-type: none"> a. Decertifying the LWDB involved; b. Prohibiting the use of specific providers (performance standard sanctions would include eligible providers and One-Stop partners who have been identified as achieving low level of performance, and other actions as determined appropriate); c. Selecting an alternative entity to administer the program for the local area involved; d. Merging the local area into the other local area; and e. Making other such changes as determined necessary to ensure compliance.

Program Violations

Violation	Possible Sanction(s)
Failure to obtain proper eligibility determination information as cited in the OOWD's monitoring/audit findings indicating ineligible or possibly ineligible participants receiving WIOA benefits (where the subrecipient discovered ineligible participants on its own, took appropriate action, and resolved the finding, sanctions would most likely not be imposed).	<ol style="list-style-type: none"> 1. Disallowing costs associated with a particular violation or deficiency and the seeking of repayment. 2. Disapproval of requests for specific or all WIOA fund drawdowns until the violation or deficiency has been corrected. The OOWD will temporarily assign WIOA administrative and program responsibilities, as appropriate, to alternative program operators. These program operators will be directly responsible to the state.

Violation	Possible Sanction(s)
Failure to meet levels of performance for the first year	If a local area fails to meet the state performance accountability indicators or the adjusted levels of performance agreed to under §677.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance must be provided by the OOWD.
Failure to meet levels of performance for the second consecutive year	Technical Assistance from the OOWD must be provided. Must include the development of a performance improvement plan or the development of a modified local plan.
Failure to meet levels of performance for the third consecutive year	OOWD Executive Director will implement a reorganization plan for the local area; a restructuring of the local board, including decertification of the current local board and the appointment and certification of a new local board consistent with the criteria established under 20 CFR §679.350; a reallocation of funds; and/or the prohibition of the use of eligible providers and one-stop system partners that have been identified as achieving/contributing to poor levels of performance.

Program Sanctions

In cases of claims of known or suspected incidents of fraud, malfeasance, misfeasance, nonfeasance, misapplication of funds, gross mismanagement, or other criminal activities in federally funded programs, the OOWD will report all known information on the Federal Incident Report. In addition, the OOWD may initiate a special investigation or audit of the incident. The special investigation or audit may include, but is not limited to additional onsite monitoring and/or a financial audit conducted by a third party auditing firm.

Notice of Intent to Sanction

After follow-up procedures are completed, if the grant recipient is found in noncompliance, the OOWD Executive Director or his or her designee will send a notice letter of impending sanctions to the appropriate chief elected official, board chairperson, and Executive Director. The notice will indicate:

- the violation,
- the corrective action to be taken,
- the impending sanction, and
- the process by which the grant subrecipient may appeal the sanction.

There is no appeal to a Notice of Intent to Sanction. There is no appeal to a determination of a disallowed cost by the OOWD. There is no appeal to a sanction requiring repayment of a disallowed cost.

Debt Collection

Should the monitoring or audit findings result in a sanction requiring repayment of a disallowed cost, debts receivable must be paid within 60 days of establishment of the debt. Repayment of debts established will be in the form of a cash payment unless negotiation between the OOWD or its Administrative Entity and the debtor produce some other method. Cash from a non-federal source is the required method of repayment where there is misuse of funds due to willful disregard of requirements of the Act, gross negligence, or failure to observe accepted standards of administration. Settlement of debts on a non-cash basis will be by exception.

If an established debt is not paid within 60 days of the final determination or if established installment payments are more than 30 days late, a letter will be sent from the OOWD or its Administrative Entity stating that payment is due immediately. At 45 days, another letter will be sent stating the account will be sent to the Attorney General's Office if not paid within 15 days. At 60 days, the account is turned over to the Attorney General and the OOWD and the Governor's Council for Workforce and Economic Development will consider whether to continue to do business with the debtor.

Methods of Repayment of Debt

- **Lump Sum:** payment in full may be made by certified check, money order, cashier's check, or bank draft.
- **Installment Payments:** cash installment repayment agreements are usually short-term duration, from three to twelve months, and are limited to 36 months by the Federal Claims Collection Standards. Duration is negotiated based on the size of the debt and the debtor entity's ability to pay.
- **Adjustment in Payments:** when cash repayment in lump sum or in installments is impossible, an agreement may be entered into with the debtor whereby the contract is reduced by the amount of the debt repayment while the program is maintained at an undiminished cost level through nonfederal contributions.
- **Withholding:** this repayment method will involve withholding amounts owed the debtor for past services or for other considerations already provided in satisfaction of the debt owed.
- **Offset:** this method involves reducing the contract up to the amount of the debt. The OOWD or its Administrative Entity may use this option with the approval of the U.S. Secretary of Labor.

Non-Cash methods must be negotiated with the OOWD or its Administrative Entity prior to being considered as a method for debt recovery.

- **Stand-in Costs:** this method is not actually a debt repayment, but is a way of "erasing" the debt. The debtor must identify allowable non-federal costs associated with the contract but not charged to the contract, and substitute those costs for the disallowed costs, thus erasing the debt. These expenditures must have been reported to the OOWD or its Administrative Entity with the quarterly financial status report or closeout package for the year the costs were incurred in order to be considered for disallowed costs incurred during that same time period. This method would require negotiation and agreement with the debtor that such costs are subject to audit. Documentation that will establish a clear audit trail must be maintained when such agreements are made.

Appeals

All final monitoring determinations are subject to the State's appeal process pursuant to OWDI #11-2017, Change 1, Governor's Oversight and Monitoring policy. When instances of substantial violations, fraud, abuse, or lack of sustained fiscal integrity are found, the OOWD may issue immediate sanctions with proper notice and explanation of process by which the sanction(s) may be appealed.

Common Terms and Definitions contained within a Monitoring or Investigative Report

Observation: At the time of examination, the OOWD Policy and Program team may indicate key actions, processes, or items noticed or sampled. Observations are practices or processes that are particularly effective or efficient and/or may be replicated. Or, these observations are practices or processes that are not effective or efficient and should be re-evaluated. These observations may also include questionable operational or business practices that must be noted for documentation purposes.

Area of Concern: At the time of examination, areas of concern are questionable indicators that have not been met or are potentially problematic processes that without notation or action may result in a finding at a later point. Areas of concern are primarily for technical assistance purposes to prevent violations of:

- a. Federal Law;

- b. Federal Regulations;
- c. Grant agreement;
- d. Contract agreement;
- e. Formal state policy.

Questioned Costs: At the time of examination, the OOWD Policy and Program team may indicate key actions, processes, or items noticed or sampled. Observations are practices or processes that are particularly effective or efficient and/or may be replicated. Or, these observations are practices or processes that are not effective or efficient and should be re-evaluated. These observations may also include questionable operational or business practices that must be noted for documentation purposes.

Disallowed Costs: Charges to an award that are determined to be a finding, and unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Administrative Finding – Any violation of:

- a. Federal Law;
- b. Federal Regulations;
- c. Grant agreement;
- d. Contract agreement;
- e. Formal state policy.

Fraud, Misfeasance, Nonfeasance or Malfeasance Fraud: Misfeasance, nonfeasance or malfeasance should be considered broadly as any alleged deliberate action that is in violation of federal statutes and regulations. This category includes, but is not limited to, indications of bribery, forgery, extortion, embezzlement, theft of client checks, kickbacks from clients, intentional payment to a contractor or service provider without the expectation of receiving services, payment to ghost enrollees, misuse of appropriated funds, and misrepresenting information in official reports.

Misapplication of funds is considered as use of funds, assets, or property not authorized or provided for under WIOA regulations, grants, agreements or contracts. This category includes, but is not limited to, nepotism, political patronage, use of clients for political activities, ineligible clients, conflict of interest, failure to report income from federal funds, violation of agreement/contracts/grant procedures, and the use of federal funds for other than specified purposes.

Gross Mismanagement/Gross Negligence is considered as actions or situations arising out of management ineptitude, oversight, or a disregard of the need to exercise reasonable care, leading to substantial violations of WIOA processes, regulation, or agreement/contract/grant provisions which could severely hamper the accomplishment of program goals. These include situations that lead to waste of government resources and could jeopardize future support for a particular project. This category includes, but is not limited to, non-auditable records, unsupported costs, highly inaccurate fiscal or program reports, payroll discrepancies, payroll deductions not paid to the Internal Revenue Service, failure to carry out basic required functions, and the lack of good internal control procedures.

Employee/client misconduct is considered as actions occurring during or outside work hours that reflect negatively on USDOL, the State of Oklahoma, or the WIOA program. Misconduct may include, but is not limited to, conflict of interest involving outside employment, business, and professional activities, the receipt or giving of gifts, fees, entertainment and favors, misuse of Federal property, misuse of official information and such other activities as might adversely affect the confidence of the public, as well as serious violations of Federal and State laws.

Sustained Fiscal Integrity means for the purpose of determining initial and subsequent local area designation, that the State/Grant Officer has not made a formal determination that either the grant recipient or any other entity

charged with expending local area funds misexpended such funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the 2-year period preceding the determination.

Substantial Violation is a severe violation of the provisions of WIOA Title I-B, which may include, but is not limited to, fraud, misfeasance, nonfeasance, malfeasance, misapplication of funds, gross mismanagement, gross negligence, failure to take corrective action, failure to meet performance goals in consecutive years, lack of sustained fiscal integrity, and failure to perform the duties required by the WIOA Act.

All finalized monitoring and investigative reports, including corrective action correspondence, will be maintained in a centralized location accessible and available to all in-house staff, DOL representatives, auditors, and other authorized individuals.

REASONABLE ACCOMMODATIONS: Under Section 188 of the Workforce Innovation and Opportunity Act and related regulations, providers must provide reasonable accommodations to qualified individuals with disabilities, unless providing the accommodation would cause undue hardship. No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities.

EQUAL OPPORTUNITY AND NONDISCRIMINATION STATEMENT: All recipients, and subrecipients/subgrantees must comply with WIOA's Equal Opportunity and Nondiscrimination provisions which prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I financially assisted program or activity.

ACTION REQUIRED: This Oklahoma Workforce Development Issuance (OWDI) is to become a part of your permanent records and made available to appropriate staff and subrecipients.

INQUIRIES: [If you have any questions about this issuance, please contact Staff in the Oklahoma Office of Workforce Development. Contact information can be found at http://www.oklahomaworks.gov/about/.](http://www.oklahomaworks.gov/about/)